MEDOC TRADING PTE LTD

v.

VIJAY KUMAR NATARAJAN & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING PETITION NO: 17-05-1994]
19 MAY 1999

CIVIL PROCEDURE: *Costs - Personal liability of solicitor - Solicitor filing petition without client's authority - Solicitor unable to produce resolution of client's board of directors giving authority - Solicitor discharging itself from acting for client - Whether solicitor personally liable for costs of petition - Rules of the High Court 1980, O. 59 r. 8*

LEGAL PROFESSION: *Retainer - Authority - Lack of - Solicitor filing petition without client's authority - Solicitor unable to produce resolution of client's board of directors giving authority - Solicitor discharging itself from acting for client - Whether solicitor personally liable for costs of petition - Rules of the High Court 1980, O. 59 r. 8*

M/s Kumar, Jaspal, Quah & Aishah ('the respondents') had earlier represented the petitioner in a civil suit before M/s Shearn Delamore & Co took over representation from them. Subsequently, the respondents issued a RM500,000 bill to the petitioner for legal fees. The petitioner disputed the bill and a petition in respect thereof was filed by M/s Shearn Delamore & Co. During the hearing of the petition, the respondents applied by summons-in-chambers requesting M/s Shearn Delamore & Co to show proof, by way of a resolution of the petitioner's board of directors, that it had been authorised by the board to file the petition. M/s Shearn Delamore & Co then wrote to the petitioner requesting the same but received no response. Thereafter, M/s Shearn Delamore & Co applied for and obtained a declaration that it was no longer acting for the petitioner. Subsequently, M/s Shearn Delamore & Co was ordered to bear the costs of the petition. M/s Shearn Delamore & Co appealed arguing that the costs of the petition should be borne by the petitioner itself.

Held:

[1] M/s Shearn Delamore & Co clearly lacked the jurisdiction to act for the petitioner in respect of the petition. Not only was it unable to produce a resolution of the petitioner's board of directors to prove otherwise but had even discharged itself from acting for the petitioner. Consequently, and pursuant to O. 59 r. 8 of the Rules of the High Court 1980, M/s Shearn Delamore & Co was personally liable for the costs of the petition.

[Appeal by M/s Shearn Delamore & Co dismissed.]

Case(s) referred to:
Re Dunn; Simmons v. Liberal Opinion Ltd [1911] 1 KB 966 ***(foll)***
Yonge v. Toynbee [1909] 1 KB 215 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 59 r. 8

For the petitioner - Maidzuara Mohammed; M/s Shearn Delamore & Co
For the respondents - SC Chan; M/s Kumar Jaspal Quah & Aishah

Reported by Alex KC Lee

JUDGMENT

Azmel Maamor J:

This is an appeal brought by Tetuan Shearn Delamore & Co. against my decision dated 30 May 1996, ordering the said legal firm to bear the costs of this action. This action by the petitioners was filed by Tetuan Shearn Delamore & Co. purportedly acting on behalf of Medoc Trading Pte. Ltd., the petitioners. According to the petition the petitioners had earlier on engaged Tetuan Kumar Jaspal Quah & Aishah to represent them in connection with a Kuala Lumpur High Court Suit No. 023-2384-86. However sometime in December 1993 the legal representation of the suit was taken over by Tetuan Shearn Delamore & Co. For the services that they had rendered Tetuan Kumar Jaspal Quah & Aishah issued a Bill No. 4166 dated 22 Februari 1994 to the petitioner. In the said bill, Tetuan Kumar Jaspal Quah & Aishah (respondents) claimed a legal fee for the trial of the suit amounting to RM500,000 as agreed fee. This had been disputed by the petitioners. This action was filed by Tetuan Shearn Delamore & Co. in respect of the dispute over the said agreed fee in the said bill issued by the respondents. It was filed on 19 March 1994.

In the course of the hearing of this petition the respondents had applied by way of summons in chambers (encl. 12) asking Tetuan Shearn Delamore & Co., appearing on behalf of the petitioners, to produce proof by way of a resolution of the petitioners' board of directors that they had authorised Tetuan Shearn Delamore & Co. to act on their behalf in this petition, within fourteen (14) days from the date of the court order. The respondents had made this request to Tetuan Shearn Delamore & Co. *vide* a letter dated 21 March 1995. Following such request Tetuan Shearn Delamore & Co. wrote a letter dated 10 April 1995 to the petitioners asking them to furnish a copy of the resolution of the board of directors of the petitioners authorising them to act as their solicitors. But there was no response from the petitioners and no such resolution was forthcoming.

Hence on 29 June 1996 Tetuan Shearn Delamore & Co. applied to the court for a declaration (encl. 14) that they were no longer acting on behalf of the petitioners. The reason for the application is contained in the supporting affidavit of Cik Maidzuara Mohammed dated 30 January 1996 which says:

> Saya ingin memaklumkan Mahkamah Mulia ini bagi sehingga pemfailan permohonan ini, firma saya masih tidak menerima sebarang jawapan daripada syarikat Pempetisyen.

In the supporting affidavit the letter dated 10 April 1995 by Tetuan Shearn Delamore & Co. to the petitioners asking them to forward to them a copy of the petitioners' board resolution authorising Tetuan Shearn Delamore & Co. to act on their behalf in this action was attached. But the resolution was not forthcoming. It was clear to me that on the facts of this application Tetuan Shearn Delamore & Co. lacked any authority to act on behalf of the petitioners to bring this action. As such the application by Tetuan Shearn Delamore & Co. was granted by me on 29 February 1996.

Subsequent to this, the respondents applied by way of summons in chambers (encl. 19) seeking, among other prayers, to have the costs of this action taxed by the court and borne and paid by Tetuan Shearn Delamore & Co. to the respondents. At the hearing of this application it was strenuously argued by Cik Maidzuara Mohammed of Tetuan Shearn Delamore & Co. that the costs of this action should be borne by the petitioners themselves. Tetuan Shearn Delamore & Co. should not be ordered to pay the costs.

Having considered this matter carefully I was of the view that the costs of this action should be borne and paid by Tetuan Shearn Delamore & Co. themselves because on their own admission they could not produce any authority from the petitioners' board to commence action against the respondents. In the absence of a response from the petitioners to the letter sent by Tetuan Shearn Delamore & Co. for a copy of such authority, it would be very difficult for this court to be convinced that they had been authorised to act on behalf of the petitioners. It must be pointed out that in this application by the respondents, (encl. 19) Tetuan Shearn Delamore & Co. had not filed any affidavit in reply to the supporting affidavit of Encik Vijay Kumar Natrajan. Thus on the basis of the non-response by the petitioners to the letter of Tetuan Shearn Delamore and coupled with their application to be discharged from representing the petitioners, it can be conclusively assumed that they never had the authority to act for the petititoners from the very beginning of this action. In support of this I refer to the headnotes of the English Court of Appeal case of *Yonge v. Toynbee* [1909] 1 KB 215 which states:

> that the solicitors, who had taken on themselves to act for the defendant in an action they had impliedly warranted that they had authority to do so, and therefore were liable personally to pay the plaintiff's costs of the action.

In another English Court of Appeal case of *Simmons v. Liberal Opinion Ltd. In re Dunn* [1911] 1 KB 966, the following is stated in the headnotes:

> A solicitor assuming to act for one of the parties to an action warrants his authority, and is personally liable to the opposing party for costs, if it turns out that the client for whom he assumed to act is non-existing, or has revoked the authority.

In the circumstances of this case it would therefore be highly improper for me to order the petitioners to bear the cost as it was admitted by Tetuan Shearn Delamore & Co. that they did not have the petitioner's board resolution authorising them to commence the said action. In my view this is a proper case for me to invoke O. 59 r. 8 of the Rules of the High Court 1980 to order the solicitors to be personally liable to pay costs of this action. And I so ordered.